

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

WILLIAM RAY BLACK

PLAINTIFF

VERSUS

CIVIL ACTION NO. 1:07CV1159-HSO-RHW

JACQUELYN BANKS

DEFENDANT

PROPOSED FINDINGS OF FACT AND RECOMMENDATION

This matter comes before the undersigned on Petitioner William Ray Black's [14] Motion to Compel and/or for Default Judgment. Black, proceeding pro se and *in forma pauperis*, filed a 28 U.S.C. § 2254 petition for writ of habeas corpus alleging that his conviction and sentence were unconstitutional. On June 30, 2008, Black filed the instant motion in which he argued that the Respondent has not filed or served an answer or taken other action. The undersigned notes that Black filed his petition on October 26, 2007. Respondent requested extensions to answer on November 30, 2007; and February 4, 2008. The Court ultimately granted Respondent until April 4, 2008 to file its response. Respondent filed a timely answer to the § 2254 petition on April 4, 2008. Black then filed a response, which he labels as a "traverse", on May 5, 2008.

The undersigned finds that Black's motion is without merit. Contrary to his assertion, Respondent has filed an answer to Black's petition after seeking and receiving extensions to file the answer. The undersigned does not find any failure on the part of Respondent that would justify an entry of default or even the lesser sanction of compelling Respondent to answer. Although it is not entirely clear from his motion, presumably Black bases his motion for default on the fact that Respondent did not file a response to his "traverse". Respondent was under no obligation to do so. Black's § 2254 petition is now ripe for disposition and will be addressed in

due course.

RECOMMENDATION

The undersigned recommends that Petitioner's [14] Motion for Default and/or to Compel be denied.

NOTICE OF RIGHT TO APPEAL/OBJECT

Pursuant to 28 U.S.C. § 636(b)(1), any party who objects to this recommendation must, within ten (10) days after being served a copy of the Recommendation, serve and file with the Clerk of Court his written objections to the Recommendation, with a copy to the District Judge, the U.S. Magistrate Judge and the opposing party. A party filing objections must specifically identify those findings, conclusions and recommendations to which objections are being made; the District Court need not consider frivolous, conclusive or general objections. A party's failure to file objections to the proposed findings, conclusions and recommendation contained in this report shall bar that party from a *de novo* determination by the District Court. A party who fails to file written objections to the proposed findings, conclusions and Recommendation within ten (10) days after being served with a copy, shall be barred, except upon the grounds of plain error, from attacking on appeal any proposed factual finding and legal conclusion accepted by the District Court to which the party did not object. *Douglass v. United Services Automobile Association*, 79 F.3d 1415, 1428-29 (5th Cir. 1996).

SO ORDERED, this the 2nd day of February, 2009.

sl Robert H. Walker
UNITED STATES MAGISTRATE JUDGE